SINGAPORE REPORTS

GOH GEOK BUAY & ORS. v. H.J. EDWARD & ANOR.

[O.C.J. (Winslow J.) August 20, 1973]

[Singapore — Suit No. 899 of 1971]

Road Traffic — Collision — Collision from the rear — Agony of collision — Duty of care of one motorist preceeding another — Braking distance — Highway Code.

The 2nd defendant, a taxi-driver was involved in a 3-cornered collision which took place between the taxi driven by himself, a military truck driven by the 1st defendant following him, and a motor van driven by the 3rd plaintiff, coming in the opposite direction. Damages were agreed. The only question for decision was the quantum of liability between the 1st and 2nd defendants.

Held: (1) the 2nd defendant had applied his brakes suddenly and stopped his taxi without any warning to vehicles behind him in such circumstances that he was entirely to blame for the collisions;

(2) in the "agony of collision" the 1st defendant braked sharply and went into a skid for which he was not responsible at a time when he deemed it unsafe to swerve to the left or right because of the sudden action of the taxi driver.

Observations on braking distance.

Editorial Note: An appeal was lodged to the Court of Appeal. The Court of Appeal (Wee Chong Jin C.J., Chua & Kulasekaram JJ.) dismissed the appeal on October 22, 1973. No written judgment was delivered.

Case referred to:-

(1) *De Cotta* v. *Tan Hock Lee* [1972] 2 M.L.J. 1973.

CIVIL SUIT.

Amin Valibhoy for the plaintiffs.

M. Coomaraswamy for the first defendant.

Yap Tyou Min for the second defendant.

Winslow J.: The second defendant in Suit 899/71, who is a taxi driver, has appealed against my decision therein finding him wholly negligent in respect of a three-cornered collision which took place between the taxi driven by himself, a military truck driven by the first defendant and a motor van driven by the third plaintiff as a result of which the first and third plaintiffs were injured. Damages were agreed. The only question I had to decide was the question of liability as between the first defendant and the second defendant/appellant, *i.e.*, whether the first defendant or the second defendant or both were negligent.

There was no question of any negligence on the part of the third plaintiff who drove the motor van.

Shortly after noon on 16th June, 1970, under good weather conditions and with hardly any other traffic on the road, the three vehicles came into collision in the following circumstances.

The third plaintiff was driving his motor van in the direction of Changi along Upper Changi Road when near the 12th m.s., his van was involved in an accident with a military truck which, according to him, came over to his side of the road and collided with him immediately after colliding with the taxi which had previously been travelling ahead of the truck. He stated that on seeing the collision between the truck and the taxi in front of it he slowed down and stopped on the grass verge on his own side of the road. Although he was not a satisfactory witness particularly as to his recollection of exact distances, he was quite emphatic that both the taxi and the truck were travelling towards him at a speed of about 30 m.p.h. in each case. He also seemed quite certain that the taxi "slowed down suddenly" which he further clarified by stating that "it jerked to a halt for a fraction of a second and then moved on". He was quite positive that the taxi did not give a signal before it stopped. He also said that he saw people hailing the taxi. As I have already said, his memory as to distances left a good deal to be desired and he kept changing his estimate of the distances between the two vehicles, when he first saw them approaching him, from 20 feet to 120 feet and to 100 feet and then back again to 20 feet. Too much reliance cannot therefore be placed on this witness.

I was therefore left mainly with the evidence of the first and the second defendants and the police reports made by all three drivers and the sketch plan in the agreed bundle to say nothing of the photographs.

I now turn to the evidence of the first defendant, Handley, who was the driver of the military truck. He claimed that he had driven actively in the British Army in the United Kingdom, Germany, Europe and in Singapore for 7 years during which he was never involved in any motor accident. He said he held a Heavy Goods Vehicles Licence and could drive any vehicle. I had no reason whatsoever to doubt his veracity as a witness. He gave his evidence with complete candour.

He said that he was driving his truck at approximately 30 m.p.h., which was the speed-limit there, from Changi toward the direction of the city intending to turn left into Tenah Merah Besar on his way back to camp and that he was in no hurry because he had finished his work. He said that he followed the taxi in question for about a mile at a steady 30 m.p.h. at a distance of about 20 yards behind it which he kept up. He had no intention of overtaking it at all.

After passing the double white lines at the end of a bend to the left he was on the straight with the taxi still 20 yards in front of him when it suddenly stopped in front of him causing him to brake sharply whereupon his truck skidded and collided with the rear of the taxi. The truck then slewed round in a clockwise direction to the right and ran into the on-coming van which was then stationary practically opposite to the point of collision with the taxi but on the other side of the road.

He claimed that he kept his vehicle under control by keeping straight until it hit the taxi which was stationary whilst he was still skidding.

He said that he could not swerve right because of the on-coming van nor swerve left because of the monsoon drain, a bus stop, lamp-post and trees.

He agreed that he left 2 brake marks of 100 feet and 80 feet approximately and said that although he did not look at his speedometer his speed did not exceed 30 m.p.h.

He denied that he was coming so fast down the bend that, on seeing his path obstructed by the taxi and the van as he came out of the bend, he braked because owing to his speed he could not pull up in time. He said that he followed the taxi all the way

round the bend and was out of the bend before the taxi started to brake. He denied that the taxi never stopped.

At this stage, in dealing with his evidence, I would draw attention to the fact that the plan AB1 does not give any indication of the distance between "H" (the end of the double lines of the bend) and "W" (the commencement of the brake marks). I do so for the reason that this witness stated that he was 200 feet past the white lines when he realised that the taxi was applying its brakes. Assuming he is right in this, then the plan is misleading because "HW" on the plan appears to be far shorter than it actually would have been had the plan been drawn to scale. In view of the very unsatisfactory evidence of the taxi driver, with which I shall shortly be dealing, and of the excellent impression I formed of the first defendant as a witness. I found that the truck was well out of the bend and on the straight before the first defendant saw the taxi brake to a halt. I also accepted it as a fact that the truck hit the taxi on reaching the end of the brake marks and that it "slewed" round to its right thereafter and hit the van which was then almost in line with the point of impact between the taxi and the truck.

The brake marks show clearly that the truck's nearside wheels were close to the left edge of the road and I rejected any suggestion that it was attempting to overtake the taxi. In fact "UA" is 2 feet only.

On the other hand, the second defendant was a witness in whom I could repose no confidence. He too, perhaps more so than the van driver, was useless in his estimate of distances. One has only to consider his evidence that it was 100 feet from the entrance to Selarang Barracks to where he was hit with his evidence in the very next breath that the distance from the entrance to Selarang Barracks to the end of the bend at "H" was 110 or 120 feet.

He said that he was collided into from the rear by the truck. He described the bend as a blind bend which sloped downwards from the entrance to Selarang Barracks below "H" to south of the plan at AB1. The rest of his evidence was that he seldom used this road as a taxi driver, his speed was 30 m.p.h. and that he did not apply his brakes at all as there was no reason to do so and nobody hailed him.

He also denied seeing the approaching motor-van at all, an unusual utterance in view of what he said in his report and in view of the fact that it must have been straight in front of him though on the other side of the road before he was hit.

He said that the impact was not hard and that it occurred as he was keeping straight ahead after straightening out from the bend.

He said he never looked into his rear-view mirror whilst "going downhill" though he admitted seeing no vehicle in his rear-view mirror when he did look into it before reaching the entrance to Selarang Barracks and that he then never saw the truck.

He claimed that, with his windows down in the taxi, he could ordinarily hear trucks like the truck that hit him make a noise but denied hearing any noise from this truck at any time nor did he hear the sound of brakes or skidding behind him. He never saw or heard the truck at all before the collision.

I accepted the first defendant's version of how the collisions occurred. I rejected the second defendant's. I found him to be an untruthful and unreliable witness in more respects than one. The only substantially correct statement he made was about his taxi's being run into by the truck but beyond that he was of no assistance. I concluded that he was a complete liar about not braking or stopping at all. I found that he applied his brakes suddenly and stopped without any warning to vehicles such as the truck which he must certainly have known was behind him in such circumstances that he was entirely to blame for both the collisions which took place.

His counsel relied on the propositions stated by the Court of Appeal in *De Cotta* v. *Tan Hock Lee*[1] to the following effect: —

"In our opinion, the real reason for the respondent being unable to avoid colliding with the van when it suddenly pulled up, was that he was travelling too close behind the van. The distance of 30 feet which separated the two vehicles was not a safe distance in the circumstances of this case. A reasonable prudent man riding a motor scooter at 30 m.p.h. would have kept much further away from the van because it is impossible for a scooter travelling at that speed to pull up in 30 feet. Quite apart from the fact that the respondent did not in his own interest take reasonable care of himself and contributed by this want of care to his own injury, the respondent in the circumstances of this case owed a duty to the appellant to move with due care and on his own evidence he was clearly in breach of that duty."

Earlier, observations had been made to the effect that a two wheel vehicle (a scooter) which the respondent was driving requires double the distance required by a four wheel vehicle and that from *Bingham's* tables in Motor Claim Cases, 6th Edition page 86, a scooter travelling at 30 m.p.h. would require 120 feet within which to pull up (including a "thinking" distance of 30 feet).

Mr. Yap for the second defendant contended that heavy motor vehicles, like scooters, also require double the distance required by private cars and other 4 wheel vehicles.

The first defendant conceded that heavy trucks like his would leave longer brake marks than civilian vehicles.

Mr. Coomaraswamy drew attention to the fact that on page 86 *Bingham* gives slightly shorter braking distances for vehicles at 30 m.p.h. than 45 feet which *Bingham* cites from the Highway Code at page 87.

A distance of 30 feet which separated the following vehicle from the vehicle ahead of it was held not to be a safe distance in the circumstances of *De Cotta's* case.

In the circumstances of *De Cotta's* case the Court of Appeal found that it was common ground that the road at the scene of the accident sloped downwards and that it was also conceded "that it was dangerous for a scooterist to jam his brakes and come to a dead stop because he may overturn."

On the facts of the case before me I did not find that the road sloped downwards as the second defendant contended but that there was "practically no gradient after the double lines as one travels north or

ABl. Before that there is — downwards. Almost automatically I would ease foot off accelerator if there is a slope downwards. But this slope was so gradual I didn't have to ease." This is what the first defendant said in evidence and I accepted what he said. I rejected the contention that he was speeding down a slope and was accordingly unable to pull up in time behind the taxi which I did not find to be in motion.

Secondly, I did not consider that, by acting as he did, the first defendant knew or should have known that by following the taxi 50 to 60 feet behind it at 30 m.p.h. he could not in an emergency stop suddenly without endangering his own life as the Court of Appeal found in the case of the scooterist.

I found that, in the "agony of collision" as it is sometimes called, the first defendant braked sharply and went into a skid for which he was not responsible at a time when he deemed it unsafe to swerve to the left or the right, because of the sudden action of the taxi driver which left him no alternative in the matter at all.

I found that there was no excuse whatever for the second defendant's sudden stop and that this took the truck by surprise as it had followed him previously for a mile without mishap at approximately the same speed in the case of both vehicles and at a distance between them of 20 yards.

Counsel for the second defendant submitted that the truck should have kept at least 75 feet behind the taxi if they were both travelling at about 30 m.p.h. and that on his own version there was negligence on the part of the first defendant. If the taxi moved forward some 60 feet before coming to a stop and if the truck had been some 60 feet behind it this would have given the truck a total distance of 120 feet within which to pull up. The first defendant said that it was difficult to be exact about distances when he very frankly altered his original estimate of 60 feet between them to 50 feet. He also very frankly said that 50 feet would be a safe distance unless the vehicle ahead pulled up abruptly without warning. I did not hold this statement against him because this was what the court had to decide.

Having regard to his unblemished record as a military driver and the favourable impression I formed of him as the only credible witness in the case I decided that he was not to blame for the collisions even if a rigid application of the distances given by him might have suggested that he was not within the braking distances set out in the Highway Code which are themselves, at best, guide-lines. I did not regard his own estimates of distances as absolutely infallible. I found it difficult, in all the circumstances, to hold that he was following so closely behind the taxi or at such a high speed that culpability on his part had been established. The emergency was created by the wanton conduct of the taxi driver himself whose undoubted negligence both from the point of view of causative potency as well as blameworthiness was the causa causans of the collisions.

I considered the fact that brake marks of 80 and 100 feet long had been left on the road by the truck and that these might suggest a higher speed on the truck's part than 30 m.p.h. Counsel for the truck-driver said that brake marks of 90 feet were consistent with his evidence. I did not accept the contention of counsel for the taxi-driver that the truck's speed was excessive on the basis of the brake-marks alone. I found it difficult to draw an inference from the Highway Code figures alone which are cited by *Bingham* at page 87 that the truck must have been travelling at much more than 30 m.p.h. in view of the very favourable impression I formed of the truthfulness of the truck-driver as a witness although I am aware of the tendency of drivers generally to minimise the gravity of their own performances as drivers and to exaggerate that of those with whom they collide. The first defendant showed a refreshing departure from this tendency. For example, he altered his original estimate of the distance between the taxi and his truck from 60 feet to 50 feet to his own disadvantage when there was no necessity to do so.

I did not therefore find as a fact that the truck's speed had been proved to be greater than 30 m.p.h. although it might have very slightly exceeded it, as his counsel said. Even the van-driver, for what it is worth, said that the truck's speed was the same as the taxi's *i.e.* 30 m.p.h.

On all the probabilities of the case, including my assessment of the credibility of witnesses, I held the truck-driver to be blameless.

I therefore found the second defendant solely to blame for the accident and gave judgment against him in the agreed damages with costs.

Ordered accordingly.

Solicitors: *Murphy & Dunbar; Rodyk & Davidson; Battenberg & Talma.*

SEA BREEZE NAVIGATION CO. S.A. v. OWNERS OF SHIP "HSING AN"

[O.C.J. (Chua J.) October 5, 1973]

[Singapore — Admiralty *in Rem* Suit No. 130 of 1973]

Practice and Procedure — Writ of summons in rem — Application to set aside writ on grounds that claim discloses no reasonable cause of action — Alternative application for proceedings to be stayed on grounds that they are vexatious and oppressive to the defendants and an abuse of the process of the court — Principles applicable — High Court (Admiralty Jurisdiction) Act (Cap. 6) s. 3(1) — R.S.C. 1970, O. 18, r. 19.

Shipping — Claim within s. 3(1) of the High Court (Admiralty Jurisdiction) Act (Cap. 6).

In this case the plaintiffs of Panama City, Panama, had issued a writ of summons *in rem* against the defendants claiming a declaration that they are the owners of the vessel, to have possession of legal title to the vessel transferred to them and damages for breach of agreement. The vessel was arrested at Singapore at the instance of the plaintiffs. The owners of the vessel, Tai Ah Steamship Co. Ltd. of Taipeh, Taiwan, entered conditional appearance and subsequently applied to the High Court (1) that the writ of summons and all subsequent proceedings be set aside on the ground that the plaintiff's claim disclosed no reasonable cause of action of claim to ownership of the vessel or any other claim entitling the plaintiffs to invoke the admiralty jurisdiction of the court *in rem* against the vessel; (2) that all proceedings be stayed on the ground that the same was vexatious and oppressive and an abuse of the powers of the court.